

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEZEKIAH NICKELSON : CIVIL ACTION  
:   
v. :   
:   
GEORGE W. BUSH, in his official :   
capacity as President of the :   
United States : NO. 00-6170

MEMORANDUM

Dalzell, J.

July 3, 2001

Pro se plaintiff Hezekiah Nickelson, characterizing himself as a "whistle-blower", has filed a Complaint against the President of the United States in his official capacity. Nickelson is seeking "a writ of mandamus ordering the sitting President of the United States of America to stop the obvious and written crimes listed in the complaint below, prosecute the perpetrators, recover what moneys that have [sic] wrongfully been withheld from the U.S. Treasury and compensate the plaintiff/whistle-blower or his estate as the law allows," Compl. at 1.

By an Order dated January 10, 2001, Judge Padova<sup>1</sup> denied Nickelson's motion for a writ of mandamus, and by a separate order this date we have granted the defendant's motion to dismiss the Complaint.<sup>2</sup> We now consider the defendant's renewed motion for an injunction enjoining Nickelson from filing

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<sup>1</sup>This case was reassigned to us on January 17, 2001.

<sup>2</sup>Also by separate orders this date we have denied Nickelson's motion to have the case reassigned to another judge and denied Nickelson's motion to rescind the Order of January 10, 2001.

future lawsuits (docket number 9), and for the reasons we discuss below, we will grant that motion.

We begin by taking judicial notice of the history of Nickelson's prior filings with our Court<sup>3</sup>:

- On September 28, 1994, Nickelson filed a similar civil action against former President Clinton, former Attorney General Janet Reno, former Treasury Secretary Lloyd Bentsen, and the Internal Revenue Service, Nickelson v. Clinton, Civ. No. 94-5896, which was assigned to the Honorable John P. Fullam.

- On May 30, 1995, on defendants' motion, Judge Fullam dismissed the complaint for failure to state a claim upon which relief could be granted, Nickelson v. Clinton, Civ. No. 94-5896 (E.D. Pa. May 30, 1995), which our Court of Appeals affirmed on January 18, 1996.

- One month after Judge Fullam was affirmed, on February 20, 1996, Nickelson filed virtually the same action, this time suing the United States of America, former President Clinton, former Attorney General Janet Reno, former Secretary of the Treasury Robert Rubin, Peggy Richardson (the Commissioner of the IRS), as well as Judge Fullam. Nickelson v. United States, Civ. No. 96-1243.

- On May 13, 1996, on defendant's motion, Judge Edmund V. Ludwig dismissed that case, Nickelson v. United States,

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<sup>3</sup>The following discussion is in part adapted from our Memorandum dated May 4, 1999 in Civ. No. 99-2219, a prior similar action Nickelson filed.

Civ. No. 96-1243 (E.D. Pa. May 13, 1996), and Nickelson again appealed.

- On October 22, 1996, our Court of Appeals dismissed Nickelson's appeal for lack of jurisdiction because the notice of appeal was untimely filed, Nickelson v. United States, C.A. No. 96-1743 (3d Cir. Oct. 22, 1996).

- On June 10, 1997, Nickelson once again filed nearly the same complaint, this time suing the United States of America, former President Clinton, former Attorney General Janet Reno, former Secretary of the Treasury Robert Rubin, Peggy Richardson, as well as Judge Fullam, Judge Ludwig, and every member of our Court of Appeals, Nickelson v. United States, Civ. No. 97-3942.

- On June 26, 1997, Judge Lowell A. Reed, Jr. ordered all named defendants who had been served with the complaint to "file and serve a motion testing the jurisdiction of the Court and the legal efficacy of the Complaint," Nickelson v. United States, Civ. No. 97-3942 (E.D. Pa. June 26, 1997).

- On January 8, 1998, Judge Reed dismissed that complaint, Nickelson v. United States, Civ. No. 97-3942 (E.D. Pa. Jan. 8, 1998), and Nickelson once again appealed<sup>4</sup>.

- On March 31, 1999, Nickelson filed three nearly-identical complaints: the first against the United States of

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<sup>4</sup>It would appear from the docket of that case that the appeal is still pending before our Court of Appeals. The last docket entry is Judge Reed's rejection of Nickelson's motion to proceed in forma pauperis dated August 27, 1999.

America and Third Circuit Judges Rendell and Weis, and the late Judge Seitz of that Court, Nickelson v. United States, Civ. No. 99-1619; the second against the United States of America and Chief Justice William H. Rehnquist, Nickelson v. United States, Civ. No. 99-1620; and the third against the United States of America and Judge Reed, Nickelson v. United States, Civ. No. 99-1621.

- On April 2, 1999, Judge Reed denied Nickelson's motion to proceed in forma pauperis in all three cases, dismissed all three cases pursuant to 28 U.S.C. § 1915(e)(B)(i-iii), and ordered plaintiff "not to file any further motion, petition or paper with regard to this case except for papers to appeal this Order or to notify this Court of appellate action. It is further Ordered that the Clerk of Court shall refuse to issue a summons or receive or file any further papers in this case from plaintiff except as described above."

- On April 16, 1999, Nickelson filed a notice of appeal in all three cases, and on December 9, 1999 our Court of Appeals dismissed the appeals pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), Nickelson v. United States, C.A. No. 99-1311 (3d Cir. Dec. 9, 1999), Nickelson v. United States, C.A. No. 99-1312 (3d Cir. Dec. 9, 1999), Nickelson v. United States, C.A. No. 99-1313 (3d Cir. Dec. 9, 1999).

- On April 30, 1999<sup>5</sup>, Nickelson filed another similar complaint, naming as defendants the United States of America and Judge Reed, Nickelson v. United States, Civ. No. 99-2219.

- By a Memorandum and Order dated May 4, 1999, we dismissed the Complaint sua sponte, finding that: (1) the Complaint failed to name as defendants parties against whom relief could be granted, (2) Nickelson did not have standing to assert a generalized taxpayer grievance, and (3) we would not "reward Nickelson's attempt to circumvent the judicial process by refileing virtually the same complaint every time he receives an adverse decision by a district court or a panel of our Court of Appeals," Nickelson v. United States, Civ. No. 99-2219 (E.D. Pa. May 4, 1999).

- We also found that Nickelson had "wasted the time of four district court judges [and] at least six Court of Appeals judges," and we "place[d] Nickelson on notice that should he continue to file frivolous claims against immune parties he will subject himself to a permanent injunction against the abuse of this Court's process," Nickelson v. United States, Civ. No. 99-2219 (E.D. Pa. May 4, 1999).

- On June 15, 1999, Nickelson appealed the dismissal, and on December 27, 2000 our Court of Appeals affirmed

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<sup>5</sup>Two weeks after Judge Reed dismissed his prior three filings and as the appeals of those dismissals were pending.

our dismissal, Nickelson v. United States, C.A. No. 99-1485 (3d Cir. Dec. 27, 2000).

- On December 6, 2000, Nickelson filed the Complaint in this action.

The President has now moved pursuant to the All Writs Act, 28 U.S.C. § 1651, to enjoin Nickelson from filing any future lawsuits without first obtaining leave of Court to do so, arguing that such a measure is warranted in order to stop Nickelson's repeated abuse of the judicial process.

28 U.S.C. § 1651(a) provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This statute "enables the District Court to issue such injunctions to preclude abusive, groundless and vexatious litigation," Brow v. Farrelly, 994 F.2d 1027, 1038 (3d Cir. 1993), as "[i]t is well within the broad scope of the All Writs Act for a district court to issue an order restricting the filing of meritless cases by a litigant whose manifold complaints raise claims identical or similar to those that already have been adjudicated. The interests of repose, finality of judgments, protection of defendants from unwarranted harassment, and concern for maintaining order in the court's dockets have been deemed sufficient . . . to warrant such a prohibition against relitigation of claims," In re Oliver, 682 F.2d 443, 445 (3d Cir. 1982).

"The broad scope of the District Court's power, however, is limited by two fundamental tenets of our legal system -- the litigant's rights to due process and access to the courts," Brow, 994 F.2d at 1038. In order to ensure these rights, a court considering the issuance of such an injunction must meet certain requirements. First, a court "should not restrict a litigant from filing claims absent exigent circumstances, such as a litigant's continuous abuse of the judicial process by filing meritless and repetitive actions," id. Second, "the District Court must give notice to the litigant to show cause why the proposed injunctive relief should not issue," in order to ensure that "the litigant is provided with the opportunity to oppose the court's order before it is instituted," id. Third, "the scope of the injunctive order must be narrowly tailored to fit the particular circumstances of the case before the District Court," id.

We find in this case that the first two requirements have been met, and we will therefore issue an injunction tailored to this case. First, there can be no doubt that Nickelson has abused the judicial process by filing meritless and repetitive actions. As detailed above, for the past six and a half years, Nickelson has filed a series of no less than eight meritless lawsuits. Each of these lawsuits was aimed at some combination of elected or appointed public officials, members of the judiciary, and the United States of America, and each of these actions was ultimately rooted in the meritless "whistle-blower"

claim that the Government was wrongly failing to collect certain revenues allegedly owed or was wrongly failing to investigate corporate wrongdoing.<sup>6</sup> As we found in our May 4, 1999 Memorandum, Nickelson has, through his repetitive meritless filings, wasted the time of many federal judges, and we also note that the filing of these actions has subjected to unwarranted harassment the Government attorneys who are obliged to take them seriously and to respond to them. In disposing of Nickelson's last meritless action, we found that "[t]he time has come for the judiciary to say enough is enough," and this is even more true today, over two years later. Nickelson's claims have repeatedly been found meritless by five different district court judges and several panels of our Court of Appeals, and we find it entirely proper to enjoin any of Nickelson's further efforts to have his amorphous claims of wrongdoing adjudicated again.

Second, we find that Nickelson has received adequate notice of the issuance of an injunction against him. The President first moved for this relief on December 11, 2000, and filed a renewed motion for an injunction<sup>7</sup> on January 25, 2000. These motions clearly put Nickelson on notice that an injunction

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<sup>6</sup>The allegations in each Complaint do demonstrate some variation on this theme, but these minor differences in the meritless claims that Nickelson has brought do not make him any less subject to our injunctive power here. Naturally, we view the claims Nickelson brings against members of the judiciary, which stem from the resolution of prior actions, as being completely derivative of the fundamental claims of governmental and corporate wrongdoing.

<sup>7</sup>The motion we consider here.



might issue, and have afforded him adequate opportunity to to respond.<sup>8</sup>

Nickelson used this opportunity to respond by filing a "motion for the court to disregard defendant's motion . . . for an injunction," in which he argued, inter alia that "the defendant has not addressed the complaint[] but has attacked the plaintiff who is doing his duty of reporting crimes against the nation that are devastating the nation and its people. . . . [T]he attack on the plaintiff is a pack of lies . . . ."

Nickelson also later filed a "motion that the defendant's memorandums of law be disregarded" in which he argued, inter alia, that disregarding his arguments was "kill[ing] the messenger", and that President George W. Bush's failure to take action demonstrated the President's "lies, crimes and abuse" and showed that President Bush "is a felon no different from his predecessor." In short, Nickelson's papers in "opposition" to the instant motion fail to identify any factors to countervail the concerns about Nickelson's vexatious and repetitive litigation that we have identified and discussed above.

Having concluded that the issuance of an injunction is amply warranted here, we must narrowly tailor that injunction to the circumstances of this case. Given the breadth of Nickelson's

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<sup>8</sup>More than this, however, and as discussed above, our May 4, 1999 Memorandum in Civ. No. 99-2219 explicitly "place[d] Nickelson on notice that should he continue to file frivolous claims against immune parties he will subject himself to a permanent injunction against the abuse of this Court's process."

meritless allegations, we find it proper to enjoin Nickelson from filing any future action in this Court without first obtaining leave of Court.<sup>9</sup> In order to ensure that any future action is not a repetition of his earlier suits, we will require Nickelson to petition to the Court for leave to file an action to include both the proposed submission and a certification, which Nickelson shall make under oath, that (1) the claims he seeks to present have never before been raised and disposed of on the merits by the federal court, (2) he believes that the facts alleged in the Complaint are true, and (3) he knows of no reason to believe that his claims are foreclosed by controlling law. We will further direct that Nickelson will be subject to punishment for contempt of court if he submits documents to the Court without the certification discussed above or if he submits false or misleading information to the Court.

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<sup>9</sup>Nickelson has repeatedly alleged wrongdoing at the national level, and this fact makes it difficult to tailor an injunction so as to encompass only those actions substantially similar to those he was repeatedly filed in the past. That is, this case is unlike one where, for example, an inmate has repetitively filed meritless actions against his jailers. In such a case, an injunction barring any further suits against the jailers would be effective in barring the objectionable suits. Here, where the scope of Nickelson's meritless claims has been so broad, any injunction that attempted to specify particular claims or particular defendants would doubtless prove ineffective.